

JOSH STEIN  
ATTORNEY GENERAL



REPLY TO:  
CHRISTOPHER R. MCLENNAN  
(919) 716-6507 & (919) 707-3029  
FAX: (919) 716-6755  
CMCLENAN@NCDOJ.GOV

January 16, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Carey Y. Parrish, IV  
605 Yeopim Road  
Edenton, NC 27932

Re: IR2018-064

Dear Mr. Parrish:

Enclosed for your files is a copy of the Settlement Agreement which was approved by the Pesticide Board on January 14, 2020. If you have not already done so, please remit your \$1,200.00 as soon as possible. Per the terms of the settlement agreement, payment is due within 30 days from the Board's approval. The check should be made payable to the North Carolina Department of Agriculture and Consumer Services, with the file number listed on the reference line above printed on it. Please mail the check to this address:

J. Patrick Jones  
Deputy Director of Pesticide Programs  
North Carolina Department of Agriculture and Consumer Services  
Structural Pest Control and Pesticides Division  
1090 Mail Service Center  
Raleigh, NC 27699-1090

Thank you for your cooperation in this matter.

Sincerely,

Christopher R. McLennan  
Assistant Attorney General

CRM/vgm  
Enclosures  
cc: J. Patrick Jones



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CAREY Y. PARRISH, IV,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2018-064

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Carey Y. Parrish, IV, Respondent.

1. At all times relevant hereto, Respondent held North Carolina Aerial Pesticide Applicator (Pilot) License No. 027-878.
2. On August 7, 2018, Complainant's North Carolina Pesticide Inspector, Clay Hudson, responded to a complaint filed by Ms. Julie Asbed alleging that an aerial application of pesticides to the field across from her house had drifted onto her and a friend standing in her driveway at the time of the application on the evening of August 6, 2018.
3. Complainant's Inspector went to visit Ms. Asbed on August 7, 2018, at her property located at 1106 Penelope Lane, Williamston, North Carolina. Ms. Asbed told Complainant's Inspector that she and a friend were in her driveway and yard when a plane flew over her house and sprayed the field across from her house. Ms. Asbed said that she and one of her friends had felt some drops land on them as the plane passed overhead. Ms. Asbed said that later they both experienced headaches and that her friend took ibuprofen but did not go to the doctor. Ms. Asbed was concerned that a pesticide was applied to her property. Ms. Asbed did have the shirt she had worn when sprayed.
4. Complainant's Inspector asked Ms. Asbed if she had applied any pesticides on her yard in the last few weeks and she said she had not. Ms. Asbed said she does not apply any chemicals to her yard and she has instructed her landscaper to not apply anything either.

5. On August 7, 2018, Complainant's Inspector talked with Mr. Jon L. (James) Griffin about applications made to his cotton field located off Hardison Road and adjacent to Ms. Asbed's property. Mr. Griffin said that he had not applied any pesticides to his field this year but had hired Respondent to apply pesticides aerially. Mr. Griffin said that Respondent was hired to apply Bifenture EC and Mep42 to the cotton.
6. On August 7, 2018, Complainant's Inspector collected swab and vegetation samples from Ms. Asbed's property, the Hardison Road right of way, and the Griffin cotton field. Complainant's Inspector also collected the shirt that Ms. Asbed was wearing when the spraying occurred.
7. On August 9, 2018, Complainant's Inspector met with Respondent. Respondent confirmed that he had applied MepStar and Brigade 2EC to the Griffin cotton field. Respondent provided a copy of his application records for the Griffin cotton field and a map of the field. Respondent's records indicated that he made the application to the Griffin cotton on August 6, 2018.
8. Laboratory analysis of the samples collected by Inspector Bullard revealed the following:

<b>Sample</b>	<b><u>Mepiquat Chloride</u></b>	<b><u>Bifenthrin</u></b>
CH-111 Control swab	ND	ND
CH-112 Non-target swab, Asbed gate	10.8 ug	21.2 ug
CH-113 Non-target shirt, Asbed	62.0 ug	31.1 ug
CH-114 Non-target vegetation, Asbed yd, 65 ft. from house	0.440 ppm	0.371 ppm
CH-115 Non-target vegetation, NE R-O-W Hardison Rd	ND	ND
CH-116 Target vegetation, SW R-O-W Hardison Rd	ND	ND
CH-117 Target vegetation, Griffin cotton field	2.52 ppm	4.28 ppm

9. The pesticides involved in this investigation were:

Brigade 2EC (bifenthrin), EPA Reg. No. 279-3313, an acaricide/miticide/insecticide, Class II, Warning

MepStar (mepiquat chloride), EPA Reg. No. 42750-74, a plant growth regulator, Class III, Caution

10. The labels for the pesticides involved in this investigation read as follows:

*Brigade 2EC:*

**“Environmental Hazards ...** Do not make applications when weather conditions favor drift from treated areas. ... **DIRECTIONS FOR USE ...** Do not apply this product in a way that will contact workers or other persons, either directly or through drift. ... **Spray Drift Requirements Wind Direction and Speed Only** apply this product if the wind direction favors on-target deposition.”

*MepStar:*

**“DIRECTIONS FOR USE ...** Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

11. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443

- (b) It shall be unlawful for any person to
  - (3) Use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456(a) (2), (5)

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

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(e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

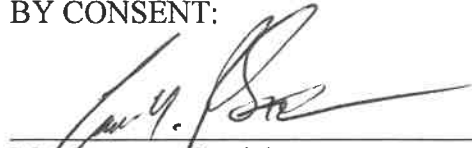
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

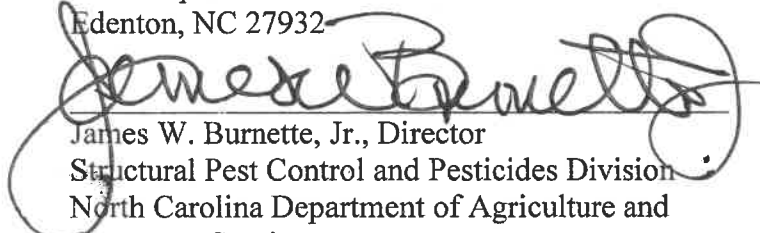
16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Mr. Carey Y. Parrish, IV  
605 Yeopim Road  
Edenton, NC 27932

12-5-19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/17/2019  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/11/19  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January, 2019.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



2018-064

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,  
**Complainant,**

v.

Carey Y. Parrish,  
**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Carey Y. Parrish, Respondent  
Patrick N. Farquhar, Eastern Field Manager